

To the issue on legal status of subject of legal relations on compulsory state social insurance in case of temporary disability

До питання про правовий статус суб'єкта правовідносин з обов'язкового державного соціального страхування на випадок тимчасової непрацездатності

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Key words:

entity, entity legal system legal entities, compulsory state social insurance, temporary disability.

Ключові слова:

особа, правова система, юридична особа, загальнообов'язкове державне соціальне страхування, тимчасова втрата працездатності.

Problem setting. In legal science in general science and in social security law the concept of the subject is one of the most important. Authors of book "The state and its bodies as subjects of labor law: theoretical and practical outline" for scientific edition of O.M. Yaroshenko argues that legal communication is impossible without mutual recognition of it members of the subjective nature of each other. Subjectivity can be designated as a set of common features that bind people together. These characteristics and the corresponding identity of participants of social communication links allow them to see each other as the part that in terms of involvement in the community can make its own interest¹.

Article's main body. The subject of law is a natural or legal person with recognized by the state ability to be carriers of subjective rights and legal duties. Accordingly, the subject of social security law is a person who has the legal status that defined by law as the bearer of rights and duties in the field of social security.

We could agree with O.I. Kulchytska, she said that to become the subject of social security law is sufficient to have the legal capacity and legal status. Such characteristic, on her view, deal with the definition of subjects of law as holders of rights and duties enshrined by the law. Holders of rights and duties in the field of social security, above all, should have mentioned rights and duties, it means that they have sectoral legal status. But the main condition of the legal status is the legal capacity². In this view, the subject of social security law can be regarded as a person who has the legal capacity and legal status.

The clear separation of subjects of law and subjects of legal relations. While the first have real rights and duties, the second only have the ability to implement them, but they can never enter into certain relationship: there is no such need of due to health and others. In this respect, we agree with the following conclusions of A.M. Slusar:

- 1) the subject of law is the potential participant of relations who considered by drafter in a static state, from the standpoint of possession of legal personality;
- 2) the subject of legal relations is the person recognized as a subject of law, but that no longer appears a potential carrier of subjective rights and legal duties, he acts as actual participant of the process of the provision implementation or legal personality implementation;
- 3) due to the fact that the term "subject of law" and "subject of legal relations" does not match (the first is general and primary, the second – a separate and secondary), using both concepts in the law-making and in scientific turnover is quite natural³.

¹ Держава та її органи як суб'єкти трудового права: теоретико-прикладний нарис : [монографія] / К.В. Гончарова, Ю.Ю. Івчук, С.М. Прилипка, О.М. Ярошенко ; за наук. ред. О.М. Ярошенка. – Х. : Право, 2014. – 288 с.

² Кульчицька О.І. Суб'єкти права соціального забезпечення України : дис. ... канд. юрид. наук : спец. 12.00.05 / О.І. Кульчицька ; Львів. нац. ун-т ім. Івана Франка. – Львів, 2007. – 188 с.

³ Слюсар А.М. Суб'єкти трудового права України : дис. ... докт. юрид. наук : спец. 12.00.05 / А.М. Слюсар ; Нац. ун-т «Юрид. акад. України ім. Ярослава Мудрого». – Х., 2011. – 407 с.

Thus, the category of “subject of law” is beyond the legal relations, and regards such state when the person possessing a certain amount of rights and duties in general or for the time missed it in specific relationship. The subject of law doesn't use all of their potential rights, but only those that it needs to participate in specific legal relations. Making a particular activity within the law, subjects acting as members of different relationships. Therefore, the activities within the law always subordinate relationships and describe the content of the actions of its members.

Any legal relations has its subjective composition, and social insurance relations due to temporary disability is no exception. These subjects are interrelated by legal rights and duties that are called subjective. This relation, in fact, is a legal relationship, where the right of a party corresponds to the duty of the other party and vice versa. Participants of legal relations act to each other as authorized and required by law individual.

Taking into account the abovementioned, the subjects of legal relations on compulsory state social insurance due to temporary disability is the subject with legal personality under the social security law provision, who interact with each other, exercising subjective rights and fulfilling the legal duties in the social-insurance sector.

These legal relations have their own system of subjects. On the legal position, the system is interpreted as a set of interrelated elements with such characteristics, such as:

- the only legal basis for the establishment and functioning of the system;
- comparison legal status of the individual elements of the system (in our case subjects);
- legal regulation of various relationships between elements;
- agreed rules and customs of business practice what are the basis of system's elements functioning and ensuring a certain level of compliance of such rules;
- the legal consequences of the exit of each element from legal bonds that creates a unified system within certain legal relations⁴.

The p. 1, Art. 6 of Basic Laws of Ukraine on compulsory state social insurance⁵ establishes the subjects of obligatory state social insurance, among them (a) insured citizens, and in some cases – their families and other persons, (b) assurers and (c) insurers. This approach contains in the Laws of Ukraine “On compulsory state social insurance” (p. 14, ch. 1, Art. 1)⁶ and “On Compulsory State Social Insurance in Case of Unemployment” (p. 2, Art. 1)⁷. V.V. Andriiv insists that borrowing the terminology of civil law by social insurance legislation is entirely legitimate, because the essence of arising relations in all cases is the risk sharing between multiple participants in this process⁸. S.V. Zhadan endorses the position of the legislator that does not apply to the range of subjects of social security the supervisory board that controls the activity of targeted insurance funds or bodies of state supervision in the field of social insurance or social partnership parties that are involved in the formation of boards of target funds and insurance supervisory body⁹.

So this approach is more civil and security-social. However, we won't take into account the fact that the Law of Ukraine “On insurance”¹⁰, that regulates relations in the field of insurance and aimed at creating insurance market, at strengthen the insurance protection of property interests of enterprises, institutions, organizations and individuals, according to its preamble does not apply to state social insurance. Mentioned legislation act in Art. 1 defines social security as a type of civil relations to protect the property interests of individuals and legal entities in case of certain events (insurance cases) defined by the insurance contract or legislation, at the expense of funds generated by payment of individuals and legal entities (insurance contributions, insurance premiums) and income from the placement of these funds. T.V. Blashuk specifies this definition: insurance is the

⁴ Олейник О.М. Основы банковского права: курс лекций / О. М. Олейник. – М. : Юрист, 1997. – 423 с.

⁵ Основы законодательства України про загальнообов'язкове державне соціальне страхування №16/98-ВР від 14.01.1998 р. // Відомості Верховної Ради України. – 1998. – № 23. – Ст. 121.

⁶ Про загальнообов'язкове державне соціальне страхування : Закон України №1105-XIV від 23.09.1999 р. // Відомості Верховної Ради України. – 1999. – № 46–47. – Ст. 403.

⁷ Про загальнообов'язкове державне соціальне страхування на випадок безробіття : Закон України № 1533-III від 02.03.2000 р. // Відомості Верховної Ради України. – 2000. – № 22. – Ст. 171.

⁸ Андріїв В.В. Правовідносини із загальнообов'язкового державного соціального страхування : дис. ... канд. юрид. наук : спец. 12.00.05 / В.В. Андріїв ; Східноукр. нац. ун-т ім. Володимира Даля. – Луганськ, 2011. – 197 с.

⁹ Жадан С.В. Організаційно-правові засади управління державним соціальним страхуванням : дис. ... канд. юрид. наук : спец. 12.00.07 / С.В. Жадан ; Київ. нац. торг.-економ. ун-т. – К., 2008. – 182 с.

¹⁰ Про страхування : Закон України № 85/96-ВР від 07.03.1996 р. // Відомості Верховної Ради України. – 1996. – № 18. – Ст. 78.

complex of economic and legal measures aimed at protecting the property interests of individuals and legal entities represented by the payment of insurance premiums in the event of unpredictable events that could lead to material loss (insurance claims) defined by the insurance contract or applicable legislation, at the expense of centralized monetary funds formed by insurers pay and by income from the placement of these funds¹¹. The Civil and Commercial Codes of Ukraine also don't regimenting the relations in the field of social security. If the first regulated moral and property relations (civil relations), based on legal equality, free will and property independence of its members, the second defines the basic principles of economic activity in Ukraine and regulates business relationships arising from organization and implementation of economic activity between entities and other participants of economic relations.

Fundamentally different position reflected in art. 3 "The subjects of the pension system in Ukraine" of Law of Ukraine "On Compulsory State Pension Insurance"¹², according to this position:

- 1) subjects of solidarity system are: a) the insured person, and in some cases determined by this Law – their families and other persons; b) insurers; c) Pension Fund; d) the authorized bank; e) enterprises, institutions and organizations engaged in payment and delivery of pensions;
- 2) subjects of funded pensions system are: a) the person on behalf and for the benefit of whom the savings and investment funds are accumulated; b) enterprises, institutions, organizations and individuals engaged in transfer payments to funded pensions system; c) Accumulation Fund; d) private pension funds; e) legal entities engaged in administration of Accumulation Fund and of private pension funds and also engaged in management of its pension assets; d) custodian; e) insurance companies; g) other subjects determined by the laws of Ukraine.

This approach is not isolated. In particular, under Art. 1 of the draft Law of Ukraine "On Compulsory Social Health Insurance" (registration № 2462a, the text on 30 July 2015)¹³ the subjects of compulsory social health insurance are the insured persons, assurers, insurers, hospitals, state. Instead, the draft Law of Ukraine "On Compulsory Social Health Insurance in Ukraine" (registration № 4981, the text on 14 July 2016)¹⁴ divides subjects of compulsory social health insurance and members of compulsory social health insurance. According to Art. 5 of this draft the first are insured persons, assurers, insurers, health care organization, Guarantee Fund of compulsory social health insurance, and the second are authorized executive body that implements the state policy on compulsory social health insurance, SRO of the insurers organization, association of insurers, insured persons associations, associations of health care. The last approach become a little modifying in the draft Law of Ukraine "On Compulsory State Health Insurance in Ukraine" (registration № 4981-2, the text on 2 August 2016)¹⁵, according to Art. 5 the subjects of compulsory state social health insurance are insured, assurers, insurers, health care organization, Fund of compulsory social health insurance, and participants are the authorized executive body that implements the state policy of compulsory social health insurance, association of insurers, insured persons associations, associations of health care organization.

M.I. Bodnaruk supports the position about the wide range of subjects of social insurance, he provides such groups:

- 1) insured persons – individuals (regardless of the presence or absence of labor relations with employers) receiving social security in the case of insured event;
- 2) the union and the social security commission created from the insured employees;
- 3) insurance funds that form the budgets of insurance funds, confirmed insurance cases that have legal significance and they are directly providers of the ensurance;
- 4) employers receiving the premiums from the gross wages of individual of the employee and they are providers of employees' ensurance;
- 5) subjects that provides to the person the right to social security by insurance funds that include health care organization, hospital;

¹¹ Блащук Т.В. Цивільно-правове регулювання особистого страхування : дис. ... канд. юрид. наук : спец. 12.00.03 / Т.В. Блащук; Київ. нац. ун-т ім. Тараса Шевченка. – К., 2003. – 255 с.

¹² Про загальнообов'язкове державне пенсійне страхування : Закон України № 1058-IV від 09.07.2003 р. // Відомості Верховної Ради України. – 2003. – № 49–51. – Ст. 376.

¹³ Проект Закону про загальнообов'язкове соціальне медичне страхування (реєстр. № 2462a, текст від 30.07.2015 р.) [Electronic resource]. – Access mode : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=56215.

¹⁴ Проект Закону про загальнообов'язкове соціальне медичне страхування в Україні (реєстр. № 4981, текст від 14.07.2016 р.) [Electronic resource]. – Access mode : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59745.

¹⁵ Проект Закону про загальнообов'язкове державне соціальне медичне страхування в Україні (реєстр. № 4981-2, текст від 02.08.2016 р.) [Electronic resource]. – Access mode : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59862.

6) subjects performing the security functions on the social security of citizens in the case of violation of their rights¹⁶.

This view of the system of social-insurance subjects fully complies to Art. 2 of Basic Laws of Ukraine on compulsory state social insurance, according to this legal act the main task of mentioned legislation is to establish guarantees of protection the rights and interests of citizens eligible for retirement, as well as other types of social protection, including the right to security in cases of illness, permanent or temporary disability, unemployment due to circumstances beyond their control, childbirth, need to care for a minor child or a disabled child, a sick family member, death of such citizens and his family members and others.

The civil approach to the system of subjects of legal relationships of compulsory state social insurance due to temporary disability focusing on financial and organizational basis of this kind of social security, leave aside the highest social value – a human caught in difficult circumstances and in need of social protection. Firstly, the social security should be seen as a guarantee of citizens' rights to maintenance and social services in case of temporary disability on the basis of social equality and accessibility, regardless of age, sex, health status by insurance money and secondly it should be determine as the financial and organizational principles of ensuring a comprehensive and effective implementation of this guarantee. This should be suggested not only about financial support and social services, but also about prevention of difficult life circumstances.

We adhere to the position that the main difference between the subjects of compulsory state social insurance due to temporary disability lies in the content of their rights and responsibilities that determines their function in the social-insurance sector.

Conclusions. Accordingly, we believe that the number of subjects of compulsory state social insurance due to temporary disability includes:

- 1) the primary subject – the insured person. The social insurance conducts in the favor of this person. All social-insurance mechanism designed and operated to ensure the implementation of the rights of the insured persons. In fact, this is the person, whose interest is the subject of social security. Without this person, it makes no sense;
- 2) the main subjects: the assurer; the insurer; state;
- 3) the original subjects: the family members of the insured person; foreigners; stateless persons; legal or individual persons who have committed the burial of the insured person; authorized state bodies and others;
- 4) supporting (service) subjects – medical institutions; spa facilities; orthopedic enterprise and others.

Анотація

У статті розглядаються суб'єкти правової системи загальнообов'язкового державного соціального страхування у зв'язку з тимчасовою втратою працездатності, описано елементи системи, визначеної за їхніми ознаками. Автором визначено поняття юридичної особи в обов'язковому державному соціальному страхуванні у зв'язку з тимчасовою втратою працездатності.

Summary

This article explores subjects of legal system of compulsory state social insurance due to temporary disability, described elements of the system, defined by their signs. Done distinction between "legal entity" and "legal entity". The author defines the concept of legal entity of compulsory state social insurance due to temporary disability.

¹⁶ Боднарук М.І. Суб'єкти правовідносин у сфері державного соціального страхування / М.І. Боднарук // Підприємництво, господарство і право. – 2001. – № 5. – С. 71–76.

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